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May 17, 2004

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Joseph A. Spetrini
Deputy Assistant Secretary
for AD/CVD Enforcement III

SUBJECT: Honey From Argentina: Issues and Decision Memorandum in the Final Results of Countervailing Duty Administrative Review

Summary

We have analyzed the case and rebuttal briefs submitted by interested parties in response to Honey from Argentina: Preliminary Results of Countervailing Duty Administrative Review, 68 FR 69660 (December 15, 2003) (Preliminary Results). The "Subsidies Valuation Information" and the "Analysis of Programs" sections set forth our determinations with respect to the programs under review as well as the methodologies applied in analyzing these programs. Also below is the "Analysis of Comments" section, which contains the Department of Commerce's (Department) response to the issues raised in the briefs. We recommend that you approve the positions we have developed in this memorandum.

Below is a complete list of issues for which we have received case and rebuttal briefs from parties:

1. Use of Facts Available
2. Use of Adverse Facts Available
3. Basis of Adverse Facts Available
4. Determination of Assessment and Cash Deposit Rates

I. Subsidies Valuation Information

A. Aggregation

Under section 777A(e)(2)(B) of the Act, the Department may calculate a single country-wide rate applicable to all exporters if the Department determines it is not practicable to determine individual countervailable subsidy rates due to the large number of exporters or producers involved in the investigation or review.

In the countervailing duty investigation of honey from Argentina, the Department solicited information from the GOA on an aggregate or industry-wide basis in accordance with section 777A(e)(2)(B) of the Act, rather than from individual producers and exporters, due to the large number of producers and exporters of honey in Argentina. See "Memorandum to the File, Countervailing Duty Investigation of Honey from Argentina: Conducting the Investigation on an Aggregate Basis," dated November 22, 2000. As noted above, in accordance with section 351.213(b)(2) of the regulations, both the GOA and petitioners requested an administrative review of this countervailing duty order. (See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 68 FR 3009 (January 22, 2003) (Initiation Notice). No individual exporters requested the review pursuant to section 351.213(b). Accordingly, the Department has conducted this review of the order on an aggregate basis and has calculated a single country-wide subsidy rate for 2001 and 2002 to be applied to all exports of the subject merchandise. See Section 777A(e)(2)(B) of the Act.

B. Allocation Period

In the underlying investigation, we identified the allocation period in accordance with section 351.524(d)(2) of the regulations which directs us to rely on the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of Treasury. No parties provided information or argument about the AUL issue. Therefore, we will continue to use the 10-year AUL as reported in the IRS tables to allocate any non-recurring subsidies under review.

C. Benchmark Interest Rates and Discount Rates

In selecting benchmark interest rates for use in calculating the benefits conferred by the various loan programs under review, we would normally look for the interest rate a borrower had received on a comparable commercial loan. See section 351.505(a)(3)(i) of the regulations. However, since we have conducted this review on the aggregate basis, and we did not examine individual companies, we sought information on the national average interest rates for comparable commercial loans. See section 351.505(a)(3)(ii) of the regulations. The GOA provided information compiled by the Central Bank of Argentina showing the national average interest rates for various types of financing: long-term, fixed-

rate, denominated in Argentine Peso and in foreign currency. For each loan program found to be countervailable, we selected a benchmark from the information provided depending upon the terms and characteristics of the particular loan program.

We are directed by section 351.524(d)(3) regarding the selection of a discount rate for the purposes of allocating non-recurring subsidies over time. Since we have conducted this investigation on an aggregate basis under section 777A(e)(2)(B) of the Act, we used, as the discount rate, the average cost of long-term fixed-rate loans in Argentina as reported by the GOA. See section 351.524(d)(3)(i)(B) of the regulations.

No parties submitted comments concerning our choice of benchmarks or discount rates.

D. Denominator Issues

As noted in the Preliminary Results, the GOA provided information for 2001 and 2002 relating to the total volume of honey produced in Argentina, the volume and value in U.S. Dollars, of total honey exports, and the volume and value in U.S. Dollars, of exports of honey to the United States. The GOA has also broken down, where possible, the export volumes and values according to the province in which the honey was produced. However, the GOA was unable to provide information relating to total domestic sales of honey for 2001 and 2002. As a proxy for total sales information, the GOA provided data showing the volume of honey production by province during 2001 and 2002. However, the GOA stated that it could not provide the value of production for 2001 and 2002. Consistent with the investigation, we calculated a proxy for the value of the total production reported by the GOA using the volume and value data provided for exports to the United States. See Notice of Final Affirmative Countervailing Duty Determination: Honey from Argentina, 66 FR 50613 (October 4, 2001) (Honey Final Determination), and the accompanying Issues and Decision Memorandum (Honey Investigation Issues Memo), at "Denominators." We divided the value of Argentine honey exports to the United States by the volume of those exports to calculate a per kilogram value in U.S. Dollars. We then multiplied this per kilogram value by the provincial production data provided to arrive at the value of total Argentine honey production during 2001 and 2002. We used this total production value as our denominator when calculating the subsidy from domestic subsidy programs provided by the GOA, and we used the relevant provincial production value as our denominator when calculating the subsidy from domestic subsidies provided at the provincial level. We used the total or provincial export values, as appropriate, as our denominators when calculating the subsidy from programs we determined to be export subsidies.

To determine the final subsidy from each provincial program that is attributable to exports of honey to the United States, we applied the following methodologies: (1) for provinces for which we have reported data on the volume and value of honey production that was exported, we weight-averaged the subsidies from each provincial program by multiplying each subsidy by the province's share of total honey exports, by value, to the United States during the POR; and

(2) for provincial domestic subsidy programs in provinces that do not have reported exports of honey to the United States during the POR, but do have reported honey production during the POR, and for which the GOA did not specifically report that the province had no exports to the United States, we divided the benefits by the value of total value of Argentine honey production during the POR.

As noted above, Argentine honey production and exports have been valued in U.S. Dollars. As detailed below, certain Argentine Peso-denominated loan programs provided benefits to Argentine honey producers and exporters in Argentine Pesos. In certain instances, we converted those Argentine Peso-denominated benefits into U.S. Dollars using the official exchange rate data provided by the GOA.

No parties submitted comments concerning our choice of denominators.

II. Analysis of Programs

A. Programs Determined to be Countervailable

1. Federal Programs

a. Argentine Internal Tax Reimbursement/Rebate Program (Reintegro)

The Reintegro program entitles Argentine exporters to a rebate of many internal domestic taxes levied during the production, distribution, and sales process on many exported products. The Reintegro program provides a cumulative stage tax rebate paid upon export, calculated as a percentage of the "free on board" (FOB) invoice price of an exported product. In the underlying investigation, the Department found the Reintegro to be countervailable. (See Honey Investigation Issues Memo, at "Argentine Internal Tax Reimbursement/Rebate Program (Reintegro))."

In the Preliminary Results, we determined that the entire amount of the Reintegro for bulk and processed honey confers a countervailable benefit. See section 351.518(a)(4) of the regulations. However, based on our analysis and verification of information, we determined that on June 18, 2001, the Reintegro rate for bulk honey was set to zero and the Reintegro rate for processed honey was set to 5 percent. Moreover, we also determined that the Reintegro rate was set to zero on September 16, 2001. As such, for the purposes of establishing the countervailable subsidy rate for 2001, we weight-averaged the Reintegro rates in effect during that year (5.4 percent for bulk honey and 12 percent for processed honey through June 18, 2001 and 5 percent for processed honey from June 18, 2001 through September 16, 2001) by the FOB value of exports of bulk and processed honey to the United States during these distinct periods in 2001. Therefore, the net countervailable subsidy rate for 2001 exports to the United States applicable to this program is 5.352 percent *ad valorem*. We also verified

the Reintegro rate was zero throughout 2002 for both bulk and processed honey. Thus, both the net countervailable subsidy rate for 2002 and the cash deposit rate applicable to this program are zero. We have obtained no additional information which would lead us to alter our finding with regard to the Reintegro.

b. Factor de Convergencia

In the Preliminary Results, we stated that after the completion of verifications in both the instant review and the concurrent antidumping duty administrative review, we learned that on the record of the administrative review of the antidumping duty order, there was verified information relating to a GOA program called the *factor de convergencia* (CFP). (See the public versions of the verification reports attached to memorandum "Honey from Argentina: Inclusion into the Countervailing Duty Administrative Review of Information from the Antidumping Administrative Review," dated December 8, 2003 (AD Public Information Memo).) Under this program, as described in public information provided by several of the respondents in the antidumping duty administrative review, honey exporters received assistance based on a percentage of the FOB value of the exports from the GOA. (See AD Public Information Memo.) According to this public information on the record, the rate of payment was determined according to a formula accounting for the exchange rate between the U.S. Dollar (US$) and the Euro. See memorandum "Honey from Argentina: Administracion Federal de Ingresos Publicos (AFIP) 'Factor de Convergencia' data," dated December 8, 2003 (CFP Public Information Memo). In addition, public information on the record of this review showed that:
1) the CFP was enacted at the same time that Reintegro payments for bulk honey were lowered effectively to zero, and 2) in instances where the CFP exceeded the Reintegro (e.g., honey), the CFP would be paid in lieu of the Reintegro, and 3) in instances where the CFP exceeded the Reintegro the CFP would be paid to the extent that it exceeded the Reintegro. (See CFP Public Information Memo.)

The very resolution from the GOA which discussed the phasing-out of the Reintegro for processed honey also discussed the interaction between Reintegro and CFP. However, the GOA translated only Article 6 of Resolution 470/2001 which addressed the phasing-out of Reintegro for processed honey. (See partial translation of Decree 470/2001 at exhibit 8 of the GOA's April 14, 2004 questionnaire response.) The GOA did not translate Article 2 of Resolution 470/2001 which discussed the interaction between Reintegro and CFP. (See Memorandum placing translation of Resolution 470/2001, Article 2 on the record of this review, dated December 8, 2003 (Article 2 Translation Memo).)

In the Preliminary Results, we found that the GOA had an affirmative obligation to provide information regarding the CFP in the following contexts: 1) in response to questions regarding other forms of assistance provided to producers and exporters of subject merchandise; 2) in response to questions regarding changes in the Reintegro program; and 3) when questioned at verification regarding assistance to exporters in lieu of Reintegro payment. Therefore, pursuant to sections 776(a)(2)(A) and 776(a)(2)(B) of the Act, we used facts otherwise available with respect to the CFP since we

determined that the GOA withheld that information that was requested by the Department and failed to provide the information requested in a timely manner and in the form required.

In the Preliminary Results, we noted that the GOA stated that it could not reasonably have been expected to provide information with respect to the CFP since: 1) it was not an additional form of assistance to exporters; 2) it had nothing to do with the Reintegro; and 3) the Department has found programs like the CFP to be not countervailable. We disagreed with the GOA's contention that it could not reasonably be expected to provide information regarding the Convergence Factor in response to the Department's questions. (See Preliminary Results at 68 FR 69662. See also Issue 1 of this memorandum for a discussion of the application of facts available.) We concluded that the GOA was aware of its obligation to report information regarding the CFP and had the ability to report its own program. Moreover, the Department found that the GOA failed to put forth its maximum efforts to comply with the Department's request for information. As such, pursuant to section 776(b) of the Act, we found that the GOA failed to cooperate to the best of its ability. (See Preliminary Results at 68 FR 69662. See also Issue 2 of this memorandum for a discussion of the propriety of applying adverse facts available.) Accordingly, in applying the facts otherwise available, the Department found that an adverse inference was warranted, pursuant to section 776(b) of the Act.

In order to calculate the countervailable subsidy for the CFP applicable to honey exports in 2001, we obtained the official daily CFP data through a search of GOA websites, and we calculated an average CFP rate for the period. (See CFP Public Information Memo.) We then multiplied that average CFP rate by the FOB value of honey exports to the United States for the same period and divided that total by the total FOB value of honey exports to the United States in 2001. As such, the net countervailable subsidy rate for the CFP applicable to 2001 is 0.060 percent *ad valorem*.

For the purposes of establishing the net countervailable subsidy rate for 2002 and the cash deposit rate of estimated countervailing duties, we obtained the official daily CFP data for the period January 1, 2002 through January 29, 2002 (the date on which Resolution 191/2002 apparently suspended the CFP) and calculated an average CFP rate for that period. We applied that average CFP rate to the total FOB value of honey exports to the United States for the same period. We estimated the total FOB value of honey exports to the United States for the period January 1, 2002 through January 29, 2002 by dividing the total FOB value of honey exports to the United States in 2002 by 365 days and multiplying the daily FOB value by 29 days. We then divided the total CFP benefit accrued during 2002 by the total FOB value of honey exports to the United States in 2002. As such, we determined that the net countervailable subsidy rate applicable to exports in 2002 and the rate of cash deposit of estimated countervailing duties applicable to this program is 0.477 percent *ad valorem*.

Both the GOA and petitioners submitted case and rebuttal briefs which extensively discussed the Department's Preliminary Results with respect to the CFP. After consideration of the comments, we have decided not to alter our finding with regard to the CFP. (Please see the "Analysis of Comments" section below for a full discussion of our position on this program.)

c. Regional Productive Revitalization Program

The GOA established the "Regional Productive Revitalization: National Program for the Promotion and Development of Local Productive Initiative" (Regional Productive Revitalization Program) to strengthen the economies of small and medium-sized towns in the Argentine interior. The program was established in 1995 with funds from the national treasury allocated for use by the provinces. Although the program was administered at the national government level, its objective was to address financial emergencies and regional economic devastation in the provinces. The program discontinued granting new credits in the beginning of 1999. However, it remains operational as long as the loans granted are outstanding and continue to be serviced. The Regional Productive Revitalization Program provided credit for the acquisition of capital goods, technology, working capital, training needs, and technical assistance. During the time the program was fully operational, two Argentine Peso-denominated loans were made to honey producers. Those loans were outstanding during both 2001 and 2002. The GOA reported that under Resolution 0324, dated September 16, 2002, borrowers were permitted to refinance their loans under this program at terms which differed for companies that had remained current in their payment of interest and principal and for companies which had not remained current with their loan repayment obligations.

In the Honey Final Determination, we determined that the Regional Productive Revitalization Program was countervailable as a regional subsidy. See Honey Investigation Issues Memo, at "Regional Productive Revitalization: National Program for the Promotion and Development of Local Productive Initiative." In the Preliminary Results, we continued to treat these two loans differently for the purposes of calculating the benefit. For the first loan, we calculated the Argentine Peso-denominated benefit for the loan by multiplying the average loan balance outstanding during 2001and 2002 by the difference between the loan interest rate charged and the benchmark interest rate. For our benchmark interest rate, we selected from the information provided by the Central Bank of Argentina, a rate for the type of loans that most closely resembled the terms of this program. See "Benchmark Interest Rates and Discount Rates" above.

For the second loan, in the Honey Final Determination, we considered that this loan had been forgiven during 1999, the period of investigation (POI), and treated the amount of debt forgiven as a grant conferred in that year. See section 351.508 of the regulations. In the Preliminary Results, we continued to treat the amount of debt forgiven as a grant conferred in that year. To calculate the benefit, we allocated the resulting Argentine Peso-denominated grant amount over the AUL of 10 years. See section entitled "Allocation Period" above. We have used an appropriate discount rate, as discussed in the "Benchmark Interest Rates and Discount Rates" section, above. Separately for 2001

and 2002 we summed the Argentine Peso-denominated benefit amounts attributable to each loan and converted the benefit amounts to U.S. Dollars using the official exchange rate data provided by the GOA. We then divided the U.S. Dollar-denominated benefits by the U.S. Dollar-denominated value of honey produced in Argentina during 2001 and 2002, as appropriate, to calculate a net countervailable subsidy rate of 0.089 percent *ad valorem* for 2001 and 0.005 percent *ad valorem* for 2002. The cash deposit rate of estimated countervailing duties for this program is 0.005 percent *ad valorem*.

d. BNA Financing for the Acquisition of Goods of Argentine Origin

The financing for the Acquisition of Goods of Argentine Origin Program was established by the Banco de la Nación Argentina (BNA), a bank owned by the GOA, pursuant to Annex B to the BNA Circular No. 10715/I. This line of credit is offered by BNA to companies purchasing capital equipment manufactured in Argentina (defined as having a maximum foreign component of 40 percent). Financing is provided for up to five years, in an amount equal to 80 percent of the purchase price of the equipment not to exceed US$500,000. There was one loan under this program to a honey producer or exporter which was outstanding during 2001 and 2002.

In the Preliminary Results at 68 FR 69665, we found that this program: 1) was specific pursuant to771(5A)(C) of the Act; 2) provided a financial contribution under section 771(5)(D) of the Act; and 3) provided a benefit under section 771(5)(E) of the Act. In order to calculate the countervailable benefit attributable to 2001, we multiplied the average outstanding loan balance during 2001 by the difference between the interest rate charged under the program and the benchmark interest rate in accordance with section 351.505(c). We then divided this benefit amount by the U.S. Dollar value of total honey production in Argentina during 2001. For 2001, we determined that the value of any countervailable benefits to honey producers or exporters under this program would have no measurable impact on the overall subsidy rate (i.e., the rate is less than 0.001 percent *ad valorem*). There is no new information or evidence of changed circumstances which would warrant reconsidering our finding with regard to this program.

We calculated the net countervailable subsidy for 2002 in five steps: 1) we multiplied the average U.S. Dollar-denominated outstanding loan balance which existed from January 1, 2002 through January 28, 2002 by the difference between the interest rate for loans charged under the program and the benchmark interest rate for U.S. Dollar-denominated loans; 2) we multiplied the average Argentine Peso-denominated outstanding loan balance which existed from January 29, 2002 through December 31, 2002 by the difference between the interest rate charged under the program and the appropriate benchmark interest rate for Argentine Peso-denominated loans made during 2002; 3) we converted the 2002 Argentine Peso-denominated benefit into U.S. Dollars using the official annual average exchange

rate data for 2002 provided by the GOA;[1] 4) we summed the two U.S. Dollar-denominated benefits from the two periods in 2002; and 5) we divided this U.S. Dollar-denominated amount by the U.S. Dollar value of total honey production in Argentina during 2002. We determined the net countervailable subsidy from this program to be 0.001 percent *ad valorem* for 2002 and the cash deposit rate of estimated countervailing duties to be 0.001 percent *ad valorem*. There is no new information or evidence of changed circumstances which would warrant reconsidering our finding with regard to this program.

2. Provincial Programs

a. Province of San Luis Honey Development Program

The San Luis Honey Development Program (SLHDP) promoted honey production to supplement the income of disadvantaged people in underdeveloped areas in the province of San Luis through credit lines. These long-term, fixed rate, and Argentine Peso-denominated loans were made as part of a series of annual campaigns which took place from 1994 through 1999.

In the underlying investigation, the Department found the Province of San Luis Honey Development Program to be countervailable and treated loans made under this program as loans that had been forgiven during the 1999. See Honey Investigation Issues Memo, at "Province of San Luis Honey Development Program" and section 351.508(a). There is no new information or evidence of changed circumstances which would warrant reconsidering our finding with regard to this program. In the instant review, we verified that the Province of San Luis had collected a few, very small payments in 2001 and 2002. However, the amount collected was so small that it warrants neither changing our treatment of this program as a forgiven loan, nor adjusting the value of the resulting grant to account for repayments of the subsidy.

In the Preliminary Results, consistent with our methodology in the investigation, we summed the amounts disbursed through the program for the years 1994 through 1999, plus the accrued interest through 1999, when the loans were effectively forgiven. We summed those amounts and added the leasing amount for 1999 and then allocated this sum over the 10-year average useful life of assets (AUL) used in the honey industry. We used the 1999 annual average of long-term fixed Peso-denominated interest rates as our discount rate. See "Benchmark Interest Rates and Discount Rates," and "Allocation Period" sections, above.

For the purposes of establishing the net countervailable subsidy rate for 2001 in the Preliminary Results, we converted the Argentine Peso-denominated benefit attributable to 2001 into U.S. Dollars using the

[1] The Argentine peso was unpegged from the U.S. Dollar pursuant to Law 25,567 enacted on January 29, 2002.

official exchange rates provided by the GOA. We then divided this amount by the U.S. Dollar value of honey production in the Province of San Luis during 2001. We then determined the net countervailable subsidy attributable to subject merchandise from this program by multiplying this amount by the percentage that honey from San Luis represents of total honey exports to the United States during 2001. Thus, the net countervailable subsidy rate attributable to this program for 2001 is 0.141 percent *ad valorem*. There is no new information or evidence of changed circumstances which would warrant reconsidering our finding with regard to this program.

For the purposes of establishing the net countervailable subsidy rate for 2002, and the cash deposit rate, we converted the Argentine Peso-denominated benefit attributable to 2002 into U.S. Dollars using the official annual average exchange rate provided by the GOA. We then divided this amount by the U.S. Dollar value of honey production in the Province of San Luis during 2002. We then determined the subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from San Luis represents of total honey exports to the United States during 2002. Thus, the net countervailable subsidy rate for 2002 and cash deposit rate applicable to this program are 0.024 percent *ad valorem*. There is no new information or evidence of changed circumstances which would warrant reconsidering our finding with regard to this program.

b. Province of Chaco Line of Credit Earmarked for the Honey Sector

The Chaco government's Line of Credit Earmarked for the Honey Sector funded efforts to increase honey production in the province. The Government of Chaco offered long-term, fixed rate, Argentine Peso-denominated loans to purchase hives as well as loans to improve access to new bee breeds and for honey extraction rooms. These loans were made as part of a series of annual campaigns which took place in 1995, 1997, and 1999.

In the Honey Final Determination, we determined that the leasing component of the Honey Program was countervailable. See Honey Investigation Issues Memo, at "Province of Chaco Line of Credit Earmarked for the Honey Sector." There is no new information or evidence of changed circumstances which would warrant the reconsideration of this finding.

However, in the Preliminary Results, based on the results of verification, we found it appropriate to make one change to the calculation of the benefit arising from this program. See Preliminary Results at 68 FR 69666. We calculated outstanding balances for these loans to include outstanding interest which accrued on these loans. In order to determine whether a benefit existed, we compared the interest rate charged on loans provided under this program to the commercial interest rates for loans that most closely resemble loans under this program. Because these are long-term, fixed rate, Argentine Peso-denominated loans, we selected from information provided by the GOA a long-term benchmark from: 1995 to apply to the 1995 tranche; 1997 to apply to the 1997 tranche; and 1999 to apply to the 1999 tranche. Based on this comparison, there is a difference in the amount the recipient of the loan pays on the loan and the amount the recipient would have paid on a comparable commercial loan that the

recipient could have actually obtained on the market. Thus, this line of credit is providing a benefit, under section 771(5)(E)(ii)of the Act. There is no new information or evidence of changed circumstances which would warrant the reconsideration of this finding.

For the Preliminary Results, we calculated the amount of the benefit for 2001 in the following steps: 1) we multiplied the average outstanding Argentine Peso-denominated loan balances for 2001 by the interest rate differential; 2) we converted the resulting Argentine Peso-denominated benefit into U.S. Dollars using the official annual average exchange rates provided by the GOA; 3) we divided this U.S. Dollar-denominated benefit by the U.S. Dollar value of honey production in the Province of Chaco during 2001: 4) we then determined the subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from the Province of Chaco represents of total honey exports to the United States during 2001. We found the net countervailable subsidy from this line of credit to be 0.084 percent *ad valorem* for 2001. There is no new information which would warrant the reconsideration of this finding.

For the Preliminary Results, we calculated the net countervailable subsidy rate for 2002 and the cash deposit rate of estimated countervailing duties in the following steps: 1) we multiplied the average outstanding Argentine Peso-denominated loan balances for 2002 by the interest rate differential; 2) we converted the resulting Argentine Peso-denominated benefit into U.S. Dollars using the official exchange rates provided by the GOA; 3) because the GOA was unable to demonstrate that no honey produced in Chaco was exported to the United States in 2002, we divided this U.S. Dollar-denominated benefit by the U.S. Dollar value of honey production in Argentina during 2002. Thus, the net countervailable subsidy rate for 2002 and cash deposit rate applicable to this program are 0.019 percent *ad valorem*. There is no new information which would warrant the reconsideration of this finding.

c. Buenos Aires Honey Program

In 1996, the Province of Buenos Aires created the Buenos Aires Honey Development Program (BAHP) to increase provincial honey production, and improve production efficiency and quality. Through the program, the Banco de la Provincia de Buenos Aires (Banco Provincia or BAPRO), a bank owned by the government of the Province of Buenos Aires, provides two types of credit lines to honey producers in the province: the Line of Credit for Working Capital; and the Line of Credit for the Acquisition of Capital Goods. Eligibility for either credit lines requires honey producers to enroll in the Province's Registry of Honey Producers. In addition, the Province of Buenos Aires provided Technical Assistance at no charge to honey producers.

In the underlying investigation, we found all three elements of the BAHP to provide countervailable subsidies. See Honey Investigation Issues Memo, at "Buenos Aires Honey Program." There is no new information or evidence of changed circumstances which would warrant reconsideration of this finding. However, the GOA reported, and we verified, that no Technical Assistance was provided under the

BAHP during 2001 and 2002.

(i.) The Line of Credit for Working Capital

The Line of Credit for Working Capital enables beekeepers to finance their operating expenses. Beekeepers applying for this loan must have a minimum of fifteen beehives. This line offers US$15.00 per active producing beehive with no limit on the number of beehives. The maximum term for repayment of the loan may not exceed 180 days from the date of the loan.
The Banco Provincia offered two different rates under this line of credit: (i) for products that will be exported, the applicable interest rate is the market rate applied by Banco Provincia under its line of credit for the pre-financing of exports: (ii) for all other cases, the applicable interest rate is the market rate that Banco Provincia charges under all other credit facilities. There were no loans for the prefinancing of exports under this line of credit with outstanding balances in 2001 or 2002.

In the Preliminary Results, we calculated the 2001 benefit by multiplying the average U.S. Dollar-denominated loan balance outstanding during 2001 by the difference between the interest rate charged by this program and the benchmark for short-term, U.S. Dollar-denominated loans (See "Benchmark Interest Rates and Discount Rates" section above). Because loans made under this program were converted from U.S. Dollars to Argentine Pesos on January 29, 2002 pursuant to Law 25,567 and Decree 214/2002, we considered this conversion to constitute, in effect, a new loan made in 2002. To calculate the benefit for 2002 we did the following: 1) we multiplied the U.S. Dollar-denominated outstanding loan balances which existed from January 1, 2002 through January 29, 2002 by the difference between the interest rate for loans charged under the program and the appropriate benchmark interest rate for U.S. Dollar-denominated loans; 2) we then multiplied the averaged Argentine Peso-denominated outstanding loan balance which existed from January 29, 2002 through December 31, 2002 by the difference between the interest rate charged under the program and the appropriate benchmark interest rate for short-term, Argentine Peso-denominated loans made during 2002; and 3) we converted the 2002 Argentine Peso-denominated benefit into U.S. Dollars using the official exchange rate data provide by the GOA. There is no new information which would warrant the reconsideration of this finding.

(ii.) The Line of Credit for the Acquisition of Capital Goods

The Line of Credit for the Acquisition of Capital Goods under the BAHP was implemented by the Banco Provincia through Circular "A" No. 13,854 in July 1997, pursuant to an agreement between the Banco Provincia and Banco de Inversion y Comercio Exterior S.A. (BICE), and utilizes funding provided through the BICE Norms 006 and 006/1. The BICE is a GOA entity, which functions as a "second tier" bank, lending money to other banks (both commercial and other government-owned or controlled banks) for the purpose of implementing government lending programs.

Under this line of credit, beekeepers are eligible to receive long-term financing for the acquisition of

capital goods including beehives, new nuclei, inert material, and extraction and processing material, among other goods. Financing for this line of credit carries a maximum repayment term of five years. Interest rates are based on the "London Interbank Offered Rate" (LIBOR), plus a spread added by the BICE, and a spread added by the Banco Provincia. The spreads given by both the BICE and Banco Provincia vary depending upon the repayment schedule of the loan. All of the loans that had outstanding loan balances during the POR were originally provided in U.S. Dollars; but these balances were converted to Argentine Pesos on January 29, 2002 in accordance with Law 25,567 and Decree 214/2002.

In the Preliminary Results, we calculated the 2001 benefit by multiplying the average U.S. Dollar-denominated balance outstanding during 2001 by the difference between the interest rate charged by this program and the benchmark for long-term U.S. Dollar-denominated loans (See "Benchmark Interest Rates and Discount Rates" section above). As discussed above, loans made under this program were converted from U.S. Dollars to Argentine Pesos pursuant to Law 25,567 and Decree 214/2002. As such, we considered that this conversion constituted, in effect, the provision of new loans made in 2002. We calculated the benefit for 2002 in the following steps: 1) we multiplied the average U.S. Dollar-denominated outstanding loan balances which existed from January 1, 2002 through January 28, 2002 by the difference between the interest rate for loans charged under the program and the appropriate benchmark interest rate for U.S. Dollar-denominated loans; 2) we multiplied the average Argentine Peso-denominated outstanding loan balance which existed from January 29, 2002 through December 31, 2002 by the difference between the interest rate charged under the program and the appropriate benchmark interest rate for long-term, Argentine Peso-denominated loans made during 2002; and 3) we converted the 2002 Argentine Peso-denominated benefit into U.S. Dollars using the official exchange rate data provide by the GOA. There is no new information which would warrant reconsideration of this finding.

Total Countervailable Subsidy from the Buenos Aires Honey Program

In the Preliminary Results, we calculated the total net countervailable subsidy for 2001 from the Buenos Aires Honey program in the following steps: 1) we summed all dollar-denominated benefits arising from Loans for Working Capital and Loans for the Acquisition of Capital Goods; 2) we divided this total 2001 benefit by the value of honey production in the Province of Buenos Aires during the 2001; 3) we then determined the subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from the Province of Buenos Aires represents of total honey exports to the United States during 2001. See section entitled "Denominator Issues" above. Thus, in the Preliminary Results, we determined that the net countervailable subsidy rate from the Buenos Aires Honey Program for 2001 was 0.047 percent *ad valorem*. There is no new information which would warrant reconsideration of this finding.

We calculated the total net countervailable subsidy for 2002 from the Buenos Aires Honey program in the following steps: 1) we summed all dollar-denominated benefits arising from Loans for Working

Capital and Loans for the Acquisition of Capital Goods; 2) we divided this total 2002 benefit by the value of honey production in the Province of Buenos Aires during the 2002; 3) we then determined the subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from the Province of Buenos Aires represents of total honey exports to the United States during 2002. See section entitled "Denominator Issues" above. Thus, in the Preliminary Results, we determined the net countervailable subsidy rate from the Buenos Aires Honey Program for 2002 and the rate of cash deposit of estimated countervailing duties applicable to this program is 0.045 percent *ad valorem*. There is no new information which would warrant reconsideration of this finding.

B. Program Determined to be Not Countervailable

Provincial Program: Buenos Aires Micro-, Small- and Medium - Sized Businesses (MIPyMEs) Agreement for 2000 and the Buenos Aires Agricultural MIPyMEs Agreement for 2000

The Province of Buenos Aires provided information on two agreements: the "Convenio Programa MIPyMEs Bonarenses 2000" and the "Convenio Programa MIPyMEs Agropecarias Bonarense 2000," which together comprise the MIPyMEs Agreement. This program is administered by the Banco de la Provincia de Buenos Aires (Banco Provincia or BAPRO) and its goal is to preserve and assist in the development of small businesses. MIPyMEs is the acronym for *Micros, Pequeñas y Medianas Empresas* (micro- small-, and medium sized businesses). Information about these programs was provided in response to the Department's question regarding whether the GOA, or entities owned directly, in whole or in part, by the government, provide, directly or indirectly, any other forms of assistance to producers or exporters of the subject merchandise.

Under the MIPyMEs Agreement, the government of the Province of Buenos Aires, through Banco Provincia, allocated US$ 50,000 for each of the agreements made under the Special Programs of Support of Economic Activities of the Province of Buenos Aires for the year 2000. The programs are to offset up to 7 annual percentage points for loans issued by Banco Provincia during the year 2000 to micro-, small-, and medium-sized companies in the agricultural, industrial, commercial, and services sectors within the Province of Buenos Aires. In general, under the MIPyMEs Agreement, loans are granted for purposes of working capital and investment. The terms (length) of the loans varied and were based on the nature of the borrower. For the honey sector, loans can be given up to US$ 20,000 and have an interest rate for non-export transactions[2] in foreign currency. The Province can defray the interest on these loan up to four percent annually.

[2] According to the questionnaire response, dated April 14, 2003, this rate typically exceeds the rate associated with loans that pertain to foreign trade, due to the perceived higher level of risk associated with the transactions.

While eligibility for this program is limited to micro-, small- and medium- sized businesses involved in agricultural, industrial, commercial, and services sectors within the Province of Buenos Aires, in accordance with section 351.502(e), a subsidy is not specific solely because the subsidy is limited to small firms or small- and medium-sized firms. As such, we preliminarily determine that this program is not *de jure* specific. We have analyzed whether the actual use of these credit loans give rise to *de facto* specificity under section 71(5A)(D)(iii) of the Act. Based on information examined at verification, these loans were provided to a broad range of borrowers within numerous industries in agriculture, industry, and services. Honey producers received significantly less than one percent of the loans, by value, under the MIPyMEs Agreement. Thus, there is no basis for concluding that benefits under this program are *de facto* specific to an enterprise or industry or group of industries within the meaning of section 771(5A)(D)(iii) of the Act. Moreover, we found no evidence to indicate that these loans were provided to finance exports or import substitution. As such, in the Preliminary Results, we determined that the loans offered under the MIPyMEs Agreement are not countervailable subsidies within the meaning of the Act. There is no new information which would warrant reconsideration of this finding.

C. Programs Determined to be Not Used

In the Preliminary Results, we determined that Argentine producers and exporters of honey to the United States did not apply for or receive benefits under the following programs during the POR.

1. Federal Programs

a. BICE Norm 011: Financing of Production of Goods Destined for Export
b. BICE Norm 007: Line of Credit Offered to Finance Industrial Investment Projects to Restructure and Modernize the Argentine Industry
c. BNA Line of Credit to the Agricultural Producers of the Patagonia
d. BNA Pre- Financing of Exports Regime for the Agricultural Sector
e. Production Pole Program for Honey Producers
f. Enterprise Restructuring Program
g. SGRs - Government Backed Loans Guarantees
h. Fundacion Export *AR
i. PROAPI

2. Provincial Programs

a. Province of Entre Rios Honey Program
b. Province of Chubut: Province of Chabut Law No. 4430/98
c. Province of Santiago del Estero Creditos de Confinanzas (Trust Credits)

There is no new information which would warrant reconsideration of our finding that these programs were not used.

III. TOTAL *AD VALOREM* RATES

The total net countervailable subsidy rate is 5.77 percent *ad valorem* for 2001 and 0.57 percent *ad valorem* for 2002. The rate of 0.57percent *ad valorem* rate will serve as the cash deposit rate for countervailing duties.

IV. ANALYSIS OF THE COMMENTS

Issue 1: Use of Facts Available

Petitioners contend that the Department properly determined that it should resort to facts available to value subsidies bestowed to the Argentine honey industry under the Convergence Factor Program (CFP). Petitioners maintain that section 776(a)(1) of the Act requires that the Department use facts available with regard to the CFP since the necessary information regarding the operation of and benefits provided by the CFP was not on the record. Moreover, petitioners maintain that sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts otherwise available when an interested party withholds information that has been requested by the Department and when an interested party fails to provide the information requested in a timely manner and in the form required. Petitioners argue that the application of facts available is appropriate under each of these criteria, even though the Department need only find one criteria to be applicable to apply facts available.

Petitioners maintain that in the Preliminary Results, the Department noted that the information necessary to analyze the operation of and benefits provided by the CFP was not on the record.
As such, petitioners argue that section 776(a)(1) of the Act requires that the Department use facts available with regard to the CFP since the necessary information regarding the operation of and benefits provided by the CFP was not on the record.

Petitioners maintain that in the Preliminary Results, the Department determined that the GOA was aware of its obligation to provide information regarding the CFP within the time limits set by the Department's questionnaires and that its failure to do so significantly impeded this administrative review. Specifically, petitioners argue that the GOA failed to submit information regarding the CFP despite the fact that the Department asked the GOA to provide information on "any other forms of assistance to producers or exporters of subject merchandise." Petitioners contend that there is no doubt that the CFP was a form of assistance provided to exporters of subject merchandise for which the GOA did not submit information. In addition, petitioners argue that the GOA did not notify the Department of the existence of the CFP even though the Department asked the GOA to provide information regarding changes to the Reintegro Program. Petitioners argue that Resolution 470/2001, which revised the Reintegro for honey and addressed the interaction between Reintegro and the CFP, was submitted to the Department in the GOA's April 14, 2003, in response to a Department question regarding changes to the Reintegro Program. Petitioners note that the GOA's April 14, 2004 response did not contain any discussion of the CFP and that Article 2 of Resolution 470/2001 was not translated. Petitioners

point out that a translation of Article 2 of Resolution 470/2001 placed on the record by the Department indicates that the amount of the Reintegro and the CFP payments were interrelated (e.g., in instances where the convergence factor exceeds the Reintegro on export, the CFP rate is paid in lieu of the Reintegro) (See Article 2 Translation Memo.) Moreover, petitioners maintain that public information from the concurrent antidumping review placed on the record of this review indicates that the operation of the Reintegro and the Convergence Factor were interrelated.

Petitioners argue that the record of this administrative review clearly shows that the GOA did not submit information regarding the CFP in response to the Department's questions. Petitioners claim that the GOA was aware of its affirmative obligation to notify the Department of the existence of the CFP and provide details with regard to the operation of and benefits provided by the CFP in response to at least one of two questions asked by the Department. As such, petitioners argue that continued use of facts available is justified pursuant to section 776(a)(2)(A) of the Act since the GOA withheld information that was requested by the Department

Finally, petitioners also maintain that in the Preliminary Results, the Department determined that the GOA failed to submit information regarding the CFP in a timely manner and in the form required pursuant to 776(a)(2)(B) of the Act. Petitioners maintain in response to the Department's questions about changes to the Reintegro, the GOA discussed changes to the Reintegro for Honey and submitted a partially translated copy of Resolution 470/2001. Petitioners note that the GOA's did not translate Article 2 of Resolution 470/2001 which detailed the interrelation between the CFP and the Reintegro and that the GOA's narrative did not contain any discussion of the CFP. Petitioners argue that a translation of Article 2 of Resolution 470/2001 placed on the record by the Department indicates that the amount of the Reintegro and the Convergence Factor payments were interrelated (e.g., in instances where the CFP rate exceeds the Reintegro on export, the CFP rate is paid in lieu of the Reintegro). (See Article 2 Translation Memo.) Petitioners contend that the GOA's failure to translate all relevant articles of Resolution 470/2001 runs contrary to the requirements of the Department's questionnaire and section 351.303(e) of the Department's regulation and therefore justify the Department's continued use of facts available with regard to the CFP.

The GOA contends that the Department's decision to use facts available with regard to the CFP in the Preliminary Results was unjustified and contrary to law. The GOA states that pursuant to sections 776(a)(2)(A) and 776(a)(2)(B) of the Act, facts available are only used when an interested party withholds information that has been requested by the Department or when an interested party fails to provide the information in a timely manner and in the form required. The GOA contends that the record of this administrative review shows not only that it did not withhold information requested by the Department but that the Department never asked about the CFP.

The GOA contends that the Department's decision to use facts available pursuant to section 776(a)(2)(A) of the Act was based on the Department's position that the GOA should have provided information on the CFP in the following contexts: 1) in response to questions regarding other forms of

assistance provided to producers and exporters of subject merchandise, or 2) in response to questions regarding changes in the Reintegro program. The GOA argues that it could not reasonably be expected to report the CFP in response to the Department's questions regarding other forms of assistance to honey producers and exporters because it had no reason to presume that the CFP was a countervailable subsidy. The GOA maintains that it provided a general answer regarding the existence of other subsidies when, in response to a question regarding the MIPyMEs Program it stated that it was "not aware of any other programs that would be considered countervailable subsidies under the relevant international agreements and U.S. law." The GOA claims that since it considered the CFP to be an exchange rate mechanism taken on a macro-economic level affecting both imports and exports it cannot be faulted for not considering the CFP to be within the scope of a general question regarding other forms of assistance to producers and exporters of subject merchandise. As such, the GOA contends that it had no reason to report the CFP in response to the Department's question regarding other forms of assistance because it did not consider that the CFP could be deemed a countervailable subsidy.

The GOA also argues that it could not reasonably be expected to report the CFP in response to the Department's questions regarding changes to the Reintegro program. The GOA maintains that the CFP was not a continuation or replacement of the Reintegro program. The GOA contends that the only link between Reintegro and CFP to exports lies in the fact that both payments are made from the Argentine National Treasury and that Resolution 470/2001 mentions multiple GOA payment mechanisms. Indeed, the GOA maintains that Resolution 470/2001 mentions "many laws, decrees, and resolutions" which also include disbursements from the National Treasury but that none of these disbursements are related to the Reintegro or the CFP. As such, the GOA maintains that the fact that both Reintegro and CFP are mentioned in Resolution 470/2001 cannot serve as the basis for considering that the GOA should have reported the CFP as a continuation or replacement of the Reintegro program.

Finally, the GOA contends that the Department's decision to use facts available pursuant to section 776(a)(2)(B) of the Act was based on the position that the GOA did not provide requested information about the CFP in a timely manner and in the form required. The GOA argues that this conclusion is unjustified since it could not be reasonably expected to answer a question which was not asked.

Department's Position: Section 776(a)(1) of the Act requires that the Department use facts available when necessary information is not on the record. No party to this proceeding disputes the fact that information necessary for the analysis of the operation of and benefits provided by the CFP was not on the record of this review. As such, the Department's application of facts available with regard to the CFP is consistent with section 776(a)(2)(B) of the Act.

Moreover, sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts otherwise available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form

required. As noted in the Preliminary Results, the record for this review demonstrates that the GOA provided no information about the CFP in response either to questions regarding changes in the Reintegro or to questions regarding any other forms of assistance provided to producers and exporters of subject merchandise. Furthermore, as noted in the Preliminary Results, the record also shows that when questioned at verification regarding whether the GOA implemented any additional forms of assistance for exporters in lieu of Reintegro payments at the time of or since the reduction of the Reintegro rates, GOA officials stated that there were no such measures. As we stated in the Preliminary Results, the CFP clearly provided assistance to exporters of the subject merchandise during the POR. As such, the GOA was obligated to provide information regarding the CFP in response to questions regarding other forms of assistance provided to exporters of the subject merchandise. Furthermore, it is reasonable to conclude that the GOA was aware of its affirmative obligation to provide information regarding the CFP in response to questions regarding other forms of assistance provided to exporters of the subject merchandise even for programs that the GOA believes are not countervailable. We note that in this administrative review, the GOA provided information for the MIPyMEs, a program like the CFP which: 1) provided assistance to exporters of subject merchandise, and 2) the GOA believed was not countervailable. As such it is reasonable to conclude that the GOA was aware of its obligation to provide information on any other forms assistance to exporters of subject merchandise even in instances where it stated that the form of assistance was not countervailable (e.g., the CFP and MIPyMEs).

We also disagree with the GOA's contention that it could not reasonably be expected to provide information regarding the CFP in response to the Department's questions regarding possible replacements to the Reintegro program. As we noted in the Preliminary Results, the GOA stated that Article 2 of Resolution 470/2001 provided that "companies accruing a credit from the difference in exchange rates would receive less of a reintegro rebate." Based even on this partial translation of Resolution 470/2001 provided by the GOA on November 20, 2003, it is clear that the operation of the Convergence Factor and the Reintegro were interrelated. Moreover, the record shows that Article 2 of Resolution 470/2001 states that in cases where the Convergence Factor is larger than the corresponding Reintegro, only the Convergence Factor should be paid in lieu of the Reintegro. (See Article 2 Translation Memo.) In other words, the Convergence Factor payment: 1) substitutes for Reintegro payments for products like honey which were no longer eligible for Reintegro payments, or 2) provides payment in addition to the Reintegro to the extent that the applicable Convergence Factor is greater than the applicable Reintegro. So while Resolution 470/2001 may have addressed multiple types of disbursements from the Argentine Treasury, the record of this review shows that Article 2 of Resolution 470/2001 governed a relationship between the CFP and the Reintegro, two programs which provided assistance to exporters of subject merchandise. Since the GOA enacted Resolution 470/2001, and Article 2 of this resolution governed the relationship of the Convergence Factor and the Reintegro, it is reasonable to conclude that the GOA was aware of its obligation to provide information regarding the Convergence Factor in response to questions regarding possible replacements to the Reintegro. Therefore, because the GOA failed to provide requested information on the CFP, the Department will continue to resort to facts otherwise available pursuant to sections 776(a)(2)(A) and

776(a)(2)(B) of the Act.

Issue 2: Use of Adverse Facts Available

Petitioners maintain that pursuant to section 776(b) of the Act, the Department may use an inference that is adverse to the interests of a respondent if it determines that a party has failed to cooperate to the best of its ability. Petitioners argue that the record shows that the GOA did not provide information regarding the CFP in response to the Department's questions and thus, failed to cooperate to the best of its ability to comply with the Department's requests for information. As such, petitioners maintain that the Department should continue to apply adverse facts available (AFA) in the final results.

Petitioners maintain that in the Preliminary Results, the Department found that the GOA had an affirmative obligation to provide information regarding the CFP in the following contexts: 1) in response to questions regarding other forms of assistance provided to producers and exporters of subject merchandise; 2) in response to questions regarding changes in the Reintegro program; and 3) when questioned at verification regarding assistance to exporters in lieu of Reintegro payment. Petitioners contend that record of this administrative review clearly shows that the GOA did not provide the requested information and that the Department correctly resorted to facts available pursuant to section 776 of the Act. Petitioners also agree with the Department's position that the GOA's failure to provide information regarding the CFP also demonstrates that the GOA did not cooperate to the best of its ability.

Petitioners contend that the United States Court of Appeals for the Federal Circuit (CAFC) recently addressed the analysis that must be performed in deciding whether a respondent has acted to the best of its ability under 19 U.S.C. 1677e(B):

> To conclude that an importer has not cooperated to the best of its ability and draw an adverse inference under section 1677e(B), Commerce need only make two showings. First, it must make an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations. See Ta Chen, 298 F.3d at 1336 (holding that Commerce reasonably expected importers to preserve record of accused antidumping activity). Second, Commerce must then make a subjective showing that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.

Nippon Steel Corporation v. United States, Slip Op., Court Nos. 02-1266 and -1267, at 12 (Fed. Cir. August 8, 2003 (Nippon Steel)

As such, petitioners contend that the initial prong of the two prong AFA test set forth in Nippon Steel is to determine whether a reasonable and responsible respondent would have known that the information requested of a respondent was required to be kept or maintained. Petitioners maintain that the record of this administrative review shows that the GOA maintained and kept the information regarding the CFP which is at issue. As such, petitioners hold that the GOA both understood its obligation to maintain the required records and had the ability to provide the required information. Petitioners maintain that the second prong of the AFA test is that the Department must show that a respondent such as the GOA has not promptly produced the requested information due either to (a) a failure to keep and maintain all records, or (b) a failure to put forth its maximum efforts to retrieve the requested information from its record. Petitioners contend that in the present administrative review, the GOA failed to make a reasonable, much less maximum, effort to provide the information for the record.

Petitioners argue that the GOA should have reasonably expected to be required to provide information regarding the CFP. Petitioners contend that information now on the record of this administrative review indicates that the CFP clearly confers assistance that is contingent upon export. As such, petitioners contend that the GOA should have reasonably expected to provide information regarding the CFP in response to the Department's question regarding other forms of assistance to exporters of subject merchandise. Moreover, petitioners contend that the record also shows that CFP and the Reintegro payments were interrelated. (See Article 2 Translation Memo.) Therefore, petitioners argue that the GOA should have reasonably expected to provide information regarding the CFP in response to the Department's questions changes to the Reintegro program. Moreover, petitioners point out that the GOA also failed to provide information regarding the CFP to the Department at verification when the GOA stated that there were no additional forms of assistance available to exporters in lieu of Reintegro payments. (See page 3 of "First Administrative Review of Honey from Argentina: Verification Report for the Argentine Internal Tax Reimbursement /Rebate Program (Reintegro); Honey Production, and Export Data," dated November 13, 2003.) As such, petitioners argue that the GOA knew what information was required by the Department and did not put forth even a reasonable, much less maximum, effort to provide the requested information to the Department.

Moreover, petitioners take issue with the GOA's position it could not reasonably have been expected to report information regarding the CFP because it believed that Convergence Factor payments to exporters of subject merchandise were not countervailable subsidies. Petitioners argue that the GOA still should have reported the CFP's existence and provided full details in response to the Department's questions and argued the non-countervailibility of the program based on the facts and law. Instead, petitioners argue that the GOA chose not to provide information on the CFP in response to the Department's questionnaires and questions at verification and incurred adverse facts available in the Preliminary Results. As such, petitioners argue that the Department should continue to apply AFA in the final results of the instant review.

The GOA disagrees with Department's application of adverse facts available to the extent that it can be read as suggesting that the Department considered the GOA to have intentionally withheld information it

knew was relevant and to have been uncooperative. The GOA maintains that as a general matter, it has fully cooperated with the Department's requests in the context of this administrative review. The GOA states this full cooperation is illustrated in its agreement to host a Department delegation in Buenos Aires to review the substantive and procedural requirements of this countervailing duty administrate review. The GOA also stresses that it cooperated fully in the conduct of the review by "answering all questions as timely as possible, and cooperating fully in verification."

The GOA holds that the Department first asked about the CFP on November 14, 2003, after it had submitted its questionnaire responses and participated in verification. In response to this inquiry, the GOA maintains that it explained that the Convergence Factor was a non-countervailable exchange rate mechanism that applied to exports and imports and stated its willingness to provide any additional information necessary. (See GOA letters of November 20, 2003 and December 8, 2003.) The GOA contends that the Department rejected the GOA's offer to provide additional information and instead chose to apply adverse facts available. The GOA states that the Preliminary Results does not explain why the Department chose not seek information regarding the CFP from the GOA. The GOA further contends that there was no lack of time to seek information regarding the CFP and points to the companion antidumping duty administrative review where the Department has issued questionnaires even after the preliminary results of that review. The GOA argues that there was nothing to prevent the Department from seeking additional information regarding the nature, scope, and effects of the CFP in the context of this administrative review even after the Preliminary Results.

Moreover, the GOA adds that it submitted Resolution 470/2001 which discussed the CFP to the record of this review in April 2003 and that neither the Department or petitioners suggested that it raised any issues from the standpoint of the countervailing duty analysis. As such, the GOA takes issue with the Department's statement in the Preliminary Results that it only became aware of the CFP "after the completion of verifications in both the administrative review and concurrent antidumping duty administrative review . . ." which were conducted in September and October 2003. Moreover, the GOA maintains that, in the context of the concurrent antidumping duty administrative review, private party exporters advised the Department and petitioners of the CFP in their May 2003 section B responses, and that the petitioners asked the Department to ask specific followup questions regarding the CFP in supplemental antidumping duty questionnaires, which the Department did in July 2003. The GOA argues that the Department's and petitioner's silence with regard to the CFP in the countervailing duty administrative review from May until November raises issues about the perceived countervailibility of the CFP and support the GOA's contention that the requirement to provide information regarding the CFP in this proceeding was not as clear as presumed in the Preliminary Results. Morever, the GOA maintains that although information on the CFP is publicly available, petitioners never alleged that the CFP should be considered a subsidy program or that the CFP was linked to the Reintegro program prior to November 2003. As such, the GOA contends that it had no reason to report the CFP in response to the Department's question regarding other forms of assistance because it did not consider that the CFP could be deemed a countervailable subsidy.

Department's Position: We disagree with the GOA's contention that in order to apply adverse inferences the Department must show that the GOA intentionally withheld information it knew was relevant and to have been uncooperative. Recent court cases demonstrate that the Department does not have to find willful or deliberate noncompliance before resorting to AFA (See Fujian Machinery and Equipment Import & Export Corp. v. United States, Slip Op. 03-92 at 16-17 (CIT July 28, 2003) (Fujian v. United States). Moreover, the CAFC has held that before resorting to AFA under section 1677e(B), the Department must show that a reasonable respondent would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations and determine that the respondent failed to promptly produce the requested information as a result of the respondent's failure to put forth its maximum efforts to investigate and obtain the requested information from its records. As we noted in the Preliminary Results, the GOA enacted the CFP and the GOA was the only party in this proceeding that had complete information regarding the CFP. As such, it is reasonable to expect that the GOA would have kept and maintained complete information with regard to the CFP. Indeed, the GOA has confirmed that it did maintain the information at issue. As such, the first prong of the AFA test set forth in Nippon Steel, at 12, has been satisfied. We also note that in its November 20, 2003 letter the GOA referred to its ability to provide complete information regarding the operation of and benefits provided by the CFP to the Department albeit after the deadline for factual information. (See section 351.301(b)(2) of the regulations.) Therefore, it is reasonable to conclude that the GOA did not exert its maximum effort to provide information regarding the CFP in response to the Department's questionnaires and questions at verification. As such, the second prong of the AFA test set forth in Nippon Steel has been satisfied.

We further disagree with the GOA's apparent position that the presence of incomplete information regarding the CFP on the record of this review somehow obviates its affirmative obligation to respond to the Department's requests for information in a complete and timely manner. As noted in the Preliminary Results and discussed above, the incomplete information on the record of this review to which the GOA refers is an original language copy of Resolution 470/2001 submitted in response to the Department's question about changes to the Reintegro. Also noted in the Preliminary Results and discussed above, the GOA did not discuss the CFP in its response to the Department's question regarding changes to the Reintegro and the GOA did not translate article 2 of Resolution 470/2001 which discussed the interrelationship between the Reintegro and the CFP. The GOA was the sole entity in this review with access to complete information regarding the CFP and that the GOA had an affirmative obligation to build a complete record for this review.

We also take issue with the GOA's conclusion with regard to the Department's and petitioner's "silence" with regard to the CFP in the countervailing duty administrative review. The record shows that GOA could have provided information on the CFP in three contexts: 1) in response to questions regarding other forms of assistance provided to producers and exporters of subject merchandise; 2) in response to questions regarding changes in the Reintegro program; and 3) when questioned at verification regarding assistance to exporters in lieu of Reintegro payment. These questions were asked to gather information on programs like the CFP which: 1) provided other forms of assistance to honey

exporters; 2) were interrelated with the Reintegro; and 3) assisted honey exporters in lieu of Reintegro payments. Moreover, since the GOA was reporting in its questionnaire responses that the Reintegro Program had been terminated, it was incumbent upon the GOA to report whether there were any other forms of assistance that may have replaced the Reintegro program. See section 351.526 of the regulations. The Department was unable to pursue a discussion of the CFP by name in the countervailing duty administrative review as a result of the GOA's not submitting any information regarding the CFP in the context of this review. Moreover, it was the GOA's non-provision of the requested information which prevented the Department from performing any analysis of the countervailablity of the CFP. As such, any lack of a discussion focused on the CFP itself sheds no light on the possible countervailibility of the CFP. Moreover, information submitted by Argentine exporters to the record of the antidumping duty administrative review is not relevant for the purposes of the countervailing duty review because the antidumping administrative review and the countervailing duty administrative review are separate proceedings with separate records.

Finally, we disagree with the GOA's contention it had no obligation to provide information regarding the CFP because the cases it cited show that the Department would not find a multiple exchange rate mechanism like the CFP to be countervailable. First, we note that the Department's decisions regarding multiple exchange rates like the CFP are fact specific and that there are several administrative cases in which the Department has found multiple exchange rates countervailable. (See, e.g., Final Affirmative Countervailing Duty Determination; Certain Electrical Conductor Aluminum Redraw Rod From Venezuela, 53 FR 24763 (June 30, 1988).) More importantly, we note that the proper course for the GOA to follow was to provide complete information regarding the CFP on the record and argue its position in the context of this review. This is the course the GOA took with regard to the MIPyMEs program. As such, we continue to find that the GOA was aware of its obligation to report information regarding the CFP and had the ability to report its own program. Therefore, the Department concludes that the GOA failed to cooperate to the best of its ability. Accordingly, in applying the facts otherwise available, the Department continues to find that an adverse inference is warranted, pursuant to section 776(b) of the Act.

We also disagree with the GOA's position that the Department should have sought information regarding the CFP from the GOA after the Preliminary Results. The record shows that the GOA first offered to submit information on the CFP on November 20, 2003, well after the deadline for the submission of factual information contemplated in 351.301(b)(2) of the regulations and after verification of the GOA's response. The record also shows that GOA did not previously submit information on the CFP even though the Department had, in its questionnaires and at verification, asked GOA to provide information on programs which, like the CFP, provided other forms of assistance to honey exporters or provided assistance to honey exporters in lieu of Reintegro payments. As such, the GOA had ample opportunity to fulfill its affirmative obligation to provide complete information on the CFP in a timely manner so that such information could have been completely analyzed, verified, and incorporated into the Preliminary Results. The GOA stated in its requests for an expansion of the POR that it would

make all "information relevant to the operation of alleged subsidy programs in 2001 and 2002" available to the Department in a complete and timely manner. The record shows that the GOA did not fulfill this commitment with respect to the CFP.

Issue 3: Basis of Adverse Facts Available

Petitioners maintain that the choice of AFA by the Department must meet the twin goals of the facts available statute: 1) ensure that an uncooperative respondent does not benefit from its non-cooperation; and 2) that the margin selected bears some relationship to the market. Petitioners cite to D&L Supply Co. V. United States, 113 F.3d 1220, 1223 (Fed. Cir. 1997):

> The Department's practice when selecting an adverse inference is to ensure that the margin is sufficiently adverse as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.

Petitioners argue that the AFA assigned to the GOA in the Preliminary Results is not sufficiently adverse to promote cooperation from the GOA in future proceedings and does not "necessarily approximate the actual benefit provided to the Argentine honey industry as a result of the CFP based on the record facts." As such, the petitioners argue that the Department should reconsider the manner in which it applied AFA in the Preliminary Results and treat all exports of honey to the United States during the relevant POR as having benefitted from the convergence factor program at the average convergence factor rates available during the period.

Petitioners contend that the Department's calculated AFA rates of 0.06 percent *ad valorem* for 2001 and 0.47 percent *ad valorem* for 2002 are "no worse than if the GOA had properly responded to the Department's request for information" on the CFP. Petitioners argue that these rates neither ensure that the Department will obtain accurate and complete information in the future nor prevent the GOA from benefitting from its lack of cooperation in this review. Petitioners argue that the calculated AFA rates do not incorporate "any adverse inferences." Rather, petitioners contend that the Department assumed that Argentine firms exported honey to the United States at the same rate throughout 2002 and allocated benefits from the CFP accordingly. Petitioners maintain that this methodology failed to account for the "fact that economically rational Argentine exporters would complete as many sales as possible while the substantial export subsidies were available." As such, petitioners contend that the Department made an inference in allocating the convergence factor that actually benefits an uncooperative respondent.

Petitioners maintain that the Department made another inference that was beneficial to the GOA and Argentine exporters when it assumed that the convergence factor subsidies were provided only during the period June 19, 2001 through January 29, 2002. Petitioners argue that while there is some information on the record allegedly showing that the CFP was terminated on January 29, 2002, petitioners maintain that they provided information on the record which they maintain

demonstrates that the "GOA may have continued to provide benefits under the CFP" after the date on which the GOA allegedly terminated the CFP. Petitioners argue that absent a full questionnaire response and verification, the Department is unable to confirm whether the CFP has been terminated.

Thus, petitioners argue that the Department is now in "the position of crediting the GOA with information helpful to it, even though the record lacks any of the information that may be adverse to it due entirely to the GOA's uncooperative behavior." Petitioners maintain that the Department has the authority under 19 U.S.C. 1677m(d) and (e) to disregard the GOA's claims that the CFP was terminated based on: (1) the GOA's failure to act to the best of its ability to provide the Department with complete information on this program, and (2) the Department's inability to verify the claimed information because it was submitted after verification. Petitioners argue that having received incomplete information from the GOA, the Department is not obligated to rely on the information that is favorable to the GOA, and should not do so.

Finally, petitioners argue the Department "cannot determine what other programs may have been established to replace the CFP and the Reintegro." Petitioners contend that the record shows that through the CFP the GOA was intent on providing a honey export subsidy in the range of the Reintegro. Petitioners claim the Article 2 of Resolution 470/2001 makes the "intentions of the GOA to continue subsidizing the honey industry (as well as other exports) clear." Petitioners maintain that, at the antidumping duty verification of Asociacion de Cooperativas (ACA), the Department verified that "the Government of Argentina was constantly issuing and re-issuing decrees with new reimbursement and export tax regimes." (See page 16 of the public version of the ACA verification report attached to the Department's AD Public Information Memo.) Petitioners argue that, given the demonstrated lack of cooperation by the GOA during a period in which it was "constantly issuing and re-issuing" decrees with new reimbursements for the benefit of the Argentine honey industry, "it is reasonable for the Department to conclude that either the honey exporters obtained the full amount of Convergence Factor for all exports in 2001 and 2002 or obtained its equivalent through some other replacement program that has not been disclosed."

As such, petitioners argue that the Department should estimate the benefit from the CFP based on the average Convergence Factor rates available in 2001 and 2002. Petitioners contend that the Department should apply these average Convergence Factor rates to all exports of honey to the United States during the relevant POR. Petitioners contend that this assumption is reasonable given the failure of the GOA to report the CFP in response to the Department's inquiries. Moreover, petitioners maintain that such a methodology would better serve to encourage cooperation by the GOA in the future and prevent the GOA from benefitting from its lack of cooperation in the present proceeding than the AFA methodology employed in the Preliminary Results.

The GOA argues that, if the Department maintains its decision to apply adverse facts available in the final results, the Department must "corroborate secondary information from independent sources that are reasonably at the Department's disposal in order to establish whether the secondary information to

be used has probative value." The GOA claims that, in the Preliminary Results, the Department did not appear to have resorted to information readily available from public sources to corroborate the information used to calculate the countervailable subsidy for the CFP. Rather, the GOA maintains that the Department "based its conclusions and calculations on the two decrees available in the antidumping duty review record (i.e., Decree No. 803/2001 and Decree 191/2002), and simply considered them to have probative value solely because they were contemporaneous to the instant review and verified in the context of the companion antidumping duty review." The GOA argues that the Department's calculation of the benefit ignores the fact that the GOA "effectively pesified the factor de convergencia payments, thereby reducing their value in dollar terms." The GOA claims that this pesification was "widely reported in the Argentine press and was also observed by the Department in its verifications of Argentine exporters." As such, the GOA claims that the Department effectively calculated an *ad valorem* subsidy rate by dividing a peso amount of benefits by the dollar amount of exports. The GOA claims that this calculation would have been essentially correct for those years in which the U.S. Dollar and Argentine Peso were at parity, but that the dollar and peso were "never at parity in 2002." In addition, the GOA maintains that since the CFP was terminated as of January 29, 2002, the period for calculating the total FOB value of 2002 honey exports eligible for CFP payments is 28 days rather than the 29 days used in the Department's calculations. The GOA argues that in light of these facts, the Department must first convert the value of estimated Argentine Peso-denominated CFP payments into U.S. Dollars by using highest exchange rate for January 2002. The GOA also maintains that the Department should reduce the period for calculating the total FOB value of 2002 honey exports to 28 days.

Petitioners maintain that the Department should disregard the GOA's "pesification" argument because the GOA failed to provide evidence to support its claim that the benefit calculation employed by the Department was improper and overstated. Petitioners contend that the GOA's modified CFP calculation is based on new factual information that should be removed from the record and is otherwise unsupported by the record. Moreover, petitioners argue that CFP payments were not "pesified" in January 2002. Specifically, petitioners claim that Law 25,561 of Public Emergency and Reform of the Exchange System was the only measure employed by the GOA to convert the economy into pesos. Petitioners allege that this law converted most dollar debts with original amounts below US$100,000 held by Argentine financial entities into Pesos. Petitioners contend that because the convergence factor was not "pesified" in January 2002, the Department should reject the GOA's arguments and make no adjustments for pesification.

Petitioners contend that pursuant to Decree 214/2002, pesification of the economy was expanded to include most U.S. Dollar-denominated deposits in Argentine financial institutions which were converted to Argentine pesos at A$1.40 to US$1.00. As such, petitioners contend that both the CFP reimbursement and the income earned from export transactions would have been converted to pesos at the same exchange rate. Accordingly, petitioners contend that both the numerator and denominator of the Department's calculation would be affected by pesification at the same rate. As such, petitioners argue that the Department should reject the GOA's arguments and make no adjustments for

pesification.

The GOA argues that there is no basis to assume all 2001 and 2002 honey exports were affected by the CFP. The GOA contends that the Department has incorporated into this record Decree 803/2001 dated June 18, 2001 which clearly established the start date for the CFP. Moreover, the GOA contends that certain antidumping duty verification reports included in this record establish that the CFP ceased for export permit applications made after January 29, 2002. As such, the GOA contends that there is evidence on this record which establishes the start and end dates of the CFP. The GOA argues that the Department is not "free to ignore this information" even in the context of applying adverse facts available.

Department's Position: We disagree with the GOA's position that the AFA applied by the Department should take into account the pesification of the CFP benefits paid to honey exporters. The GOA position is based on the contention that the U.S. Dollar and Argentine Peso were never at parity in 2002 and that the Department was able to verify the impact of pesification on the Argentine economy. Neither contention is supported by evidence on the record of this review. We note that in its April 14, 2003 questionnaire response, the GOA stated that "Argentina floated its currency" after early February 2002. We also note that exhibit 4 of the April 14, 2003 response indicates that the U.S. Dollar and Argentine Peso were at parity until January 11, 2002 and that the Argentine Peso was floated on January 29, 2002. Given the unclear relationship between the U.S. Dollar and the Argentine Peso during early 2002, we believe that it reasonable to continue to use January 29, 2002 as the date on which the U.S. Dollar and Argentine Peso were unpegged. Moreover, we take issue with the GOA's position that the Department was able to fully verify the impact of pesification on the Argentine economy. The record of this review shows that the GOA did not provide complete information regarding the CFP on the record of this review. Indeed, the lack of complete information prevented the Department from analyzing any aspect of the CFP including the alleged pesification of CFP benefits paid to honey exporters. So, while the Department did verify the impact of pesification with regard to the various loan programs analyzed in this administrative review, we did not verify any alleged impact of pesification on the CFP. Furthermore, as noted in the Preliminary Results, the GOA calculated the official CFP rate on a daily basis using a formula based on the difference between the U.S. Dollar and the Euro and then applied a daily CFP rate to the FOB value of sales exported on that date. As such, it is reasonable to conclude that Argentine exporters priced their export sales taking into account the official CFP rate applicable on the date of export rather than the actual CFP payment made by the GOA long after the export transaction was completed. Accordingly, we will continue to determine AFA for 2002 by multiplying the average CFP rate for 2002 by the estimated total FOB value of honey exports made during the period in 2002 that the CFP operated.

We further disagree with the GOA's contention that the Department should reduce the period for calculating the total FOB value of 2002 honey exports to 28 days since the CFP was suspended as of

January 28, 2002. In the Preliminary Results, we noted that Resolution 191/2002 apparently suspended the CFP on January 29, 2002. (See CFP Public Information Memo.) Moreover, public information on the record of this review demonstrates that the GOA calculated daily CFP rates through January 29, 2002. (See daily CFP rates for 2002 attached to the Calculations Memo dated December 8, 2003.) As such, we conclude that the CFP was still operable on January 29, 2002, the last day for which the GOA calculated an official CFP rate. Therefore, we will continue to calculate the estimated FOB value of 2002 honey exports which received CFP using the period of January 1, 2002 through January 29, 2002.

We also disagree with petitioner's contention that the Department's calculated AFA: 1) are not based on any adverse inferences; and 2) are no worse that if the GOA had properly responded to the Department's request for information on the CFP. In the Preliminary Results, we estimated the total FOB value of honey exports to the United States for the period January 1, 2002 through January 29, 2002 by dividing the total FOB value of honey exports to the United States in 2002 by 365 days and multiplying the daily FOB value by 29 days. As petitioners contend, this methodology assumed, in the absence of GOA data, that Argentine firms exported honey to the United States at a constant rate throughout 2002. So while, as petitioner argue, a rational exporter might have sought to maximize his exports during January 2002 while the CFP still operated, that exporter would have had to maximize those exports at a time when the Argentine economy was suffering severe dislocations. (See e.g., page 10 of the public version of the GOA's July 14, 2003 questionnaire response; see also pages 2-3 of the public version of "First Administrative Review of Honey from Argentina: Verification Report for the Government of Argentina," dated November 20, 2003.) As such, we believe that the assumption that Argentine firms exported honey to the United States at a constant rate throughout 2002 is a reasonable inference that is sufficiently adverse.

We disagree with petitioners' position that the Department should apply the average annual CFP rates to all exports of honey to the United States during the relevant POR. We believe that such a methodology would not bear sufficient relationship to the market. See D&L Supply Co. V. United States,113 F.3d at 1223 . Moreover, we believe that the calculated AFA rates are sufficient to promote cooperation from the GOA in future proceedings and approximate the actual benefit provided to the Argentine honey industry as a result of the CFP.

Further, we disagree with petitioners' argument that the Department made another inference that was beneficial to the GOA and Argentine exporters when it assumed that the convergence factor subsidies were provided only during the period June 19, 2001 through January 29, 2002. As petitioners concede, there is information on the record that indicates that the CFP was implemented on June 19, 2001 and suspended January 29, 2002. However, petitioners also argue that there is evidence on the record which shows that GOA may have continued to provide benefits under the CFP after the alleged date on which the CFP was terminated. The public versions of verification reports from the antidumping record placed on the record of this review indicate that some exporters either received or expected to receive CFP disbursements as late as October 2003. (See AD Public Information

Memo.) We note, however, there is no indication that these CFP disbursements were related to exports of honey made after January 29, 2002 as petitioners seem to imply. Rather, the verification reports indicate that these CFP disbursements were related to exports of honey made on or prior to January 29, 2002. Moreover, because we have based our calculation of the CFP benefit for 2002 on an "as earned" upon export basis rather than an "as received" basis, taking into account payments received after January 29, 2002 would overstate the benefit provided by the CFP. See generally section 351.517(b) of the regulations. However, as petitioners noted, we were unable to analyze and verify information regarding the operation of the CFP. As such, as an additional adverse inference, the cash deposit rate applicable to imports of Argentine honey will continue to contain a component from the CFP since, in the absence of complete, verifiable, and verified information, we find that there may continue to be benefits from the CFP or replacement programs after the end of this POR.

Issue 4: Determination of Assessment and Cash Deposit Rates

Petitioners argue that in light of the GOA's failure to cooperate to the best of its ability the Department should calculate a single assessment and cash deposit rate for the entire two-year period of review "consistent with the Department's policy of preventing manipulation of the duty rates." Petitioners contend that such an action would be consistent with the Department's regulations and its treatment of first annual reviews in antidumping cases. Specifically, petitioners maintain that in the context of antidumping cases, the Department has stated:

> as a matter of administrative practice, the Department has consistently calculated assessment and deposit rates based on the entire period of review. To do otherwise would invite manipulation by parties who, depending on their point of view, could argue that one division or another of the POR would be more favorable to their interests.

See Polyethylene Terephthalate Film, Sheet, and Strip from Japan: Final Results of Administrative Review, 60 FR 32133, 32135 (June 20, 1995).

Petitioners contend that while this has not always been the Department's practice in countervailing duty cases, the circumstances in this case require that the Department act to prevent the GOA from benefitting from its failure to cooperate to the best of its ability.

Moreover, petitioners contend that nothing in the statute or regulations requires the Department to issue separate rates for each year when the POR encompasses more that one year. Petitioners maintain that section 351.213(e)(2)(ii) of the regulations contemplates that the period of review includes the entire period from the suspension of liquidation to the end of the most recently completed calendar year. Petitioners allege that section 351.213(e)(2)(ii) of the regulations indicates that the duty deposit rate and assessment rates should be similarly based on the entire POR rather than on annual segments of the

review period. Petitioners argue that applying a single average assessment rate and deposit rate for the entire two-year period is appropriate in order to prevent the GOA from "successfully benefitting from its failure to cooperate to the best of its ability."

Petitioners argue that if the Department calculates separate assessment rates for each year, it should calculate an average cash deposit rate based on the entire two-year period. Petitioners contend that this "would be consistent with the Department's authority by preventing the GOA's attempts to manipulate the cash deposit rate based on the alleged lower grant of subsidies in 2002, a period in which the Department cannot be sure on this record that subsidies to the Argentine honey industry did in fact decline."

Moreover, petitioners contend that calculating a single cash deposit rate for the 2001-2002 period, even if it applied separate assessment rates for 2001 and 2002, would be consistent with the Department's adverse facts available authority. Petitioners contend that the use of different methods by the Department to calculate assessment rates and cash deposit rates does not conflict with the statute. See Torrington Co. v. United States, 44 F.3d 1572 (Fed. Cir. 1995). Petitioners argue that only by issuing a single assessment and cash deposit rate for 2001-2002, or calculating a single cash deposit rate for the 2001-2002 could the Department ensure the GOA does not benefit from its attempts to manipulate the cash deposit rate.

The GOA maintains that the Department's memorandum "Honey from Argentina: Expansion of the Period of Review in the First Administrative Review of the Countervailing Duty Order," dated February 21, 2003 (POR Memo) states that in the present review, the Department would calculate two separate assessment rates: one for the 2001 assessment period, and another for the 2002 assessment period. The GOA argues that regardless of the basis for the final results of this review (whether or not based on facts available), there is no reason to calculate a single assessment rate. The GOA maintains that such a practice would allow an assessment rate from 2001 be influenced by facts from 2002, contrary to the Department's policy in countervailing duty reviews, and contrary to the Department's announced basis for proceeding in these reviews.

The GOA also maintains that in its POR Memo, the Department stated that it would analyze data for the period January 1, 2002 through December 31, 2002 to establish the cash deposit rate for subsequent exports of subject merchandise. The GOA argues that regardless of the basis for the final results of this review (whether or not based on facts available), the single cash deposit rate applicable to honey exports should not contain any component related to the CFP which was terminated in January 2002.

Petitioners maintain that in the Preliminary Results, the Department determined that the CFP was suspended rather than terminated. As such, petitioners argue that pursuant to section 351.526(d) or the regulations, it would be inappropriate to set the cash deposit rate applicable to the CFP at zero since the Department determined that the CFP was merely suspended and the GOA has prevented the

Department from determining whether benefits have continued under this program or a substitute program. Moreover, petitioners also argue that at the antidumping verification of ACA, the Department verified that the GOA was constantly issuing and re-issuing decrees with new reimbursement regimes. As such, petitioners argue that, given the incomplete information about the CFP on the record, the GOA's failure to cooperate with respect to CFP, setting the cash deposit rate with respect to the CFP to zero would be inappropriate.

Department's Position: We disagree with petitioners' position that only by issuing: 1) a single assessment and cash deposit rate for 2001-2002 or 2) calculating a single cash deposit rate for the 2001-2002 could the Department ensure the GOA does not benefit from its non-compliance with Department's requests for information and its attempts to manipulate the cash deposit rate. In countervailing duty cases, it is the Department's practice to calculate the subsidy rate using a one-year snapshot period. As such, when the first administrative review of a CVD order is conducted, we examine the entire year during which suspension of liquidation began, even though we issue assessment instructions for only those periods during the first year in which liquidation of entries was suspended. The subsidy rate that is applied to suspended entries is calculated by dividing benefits received during the one-year snapshot period by the relevant sales in that same period. Thus, when more than a single year is covered by the first administrative review, two rates are calculated, one for the first year which is the assessment rate for suspended entries during that year, and one for the second year which is the assessment rate for suspended entries during the second year. The rate for the second year then serves as the cash deposit rate for future entries.

We note that Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Countervailing Duty Administrative Review, 54 FR 13093 (March 30, 1989) (Cookingware from Mexico), had a December anniversary month and January initiation. In Cookingware from Mexico, the Department: 1) analyzed data for the period March 7, 1986 (the date of suspension of liquidation) through December 31, 1987; 2) calculated one subsidy rate for the period March 7, 1986 through December 31, 1986; and calculated another subsidy rate for January 1, 1987 through December 31, 1987, which then became the basis for establishing the cash deposit rate applicable to subsequent exports of the subject merchandise at issue. In Stainless Steel Plate in Coils from Belgium: Final Results of Countervailing Duty Administrative Review, 66 FR 45007, (August 27, 2001) and Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Countervailing Duty Administrative Review, 60 FR 54841 (October 26, 1995) the Department also calculated separate subsidy rates for two annual periods, and the subsidy rate for the second annual period became the cash deposit rate applicable to subsequent exports of the subject merchandise.

We agree with petitioners in that when the GOA requested a two-year POR it stated that the Reintegro rate for honey was set to zero as of September 17, 2001 and that no Reintegro payments were made for 2002 exports of honey. As such, the GOA's stated purpose in requesting a two-year POR was to ensure that importers of Argentine honey would get earlier access for 2002 entries to the lower assessment rate as well as earlier access to cash deposit rate (which would no longer include a

Reintegro component) for entries made after the publication of these final results. (See POR Memo.) Given Reintegro's large proportion of the total cash deposit rate applicable to entries since the Honey Final Determination, the Department's analysis of data for 2002 would lead to: 1) an assessment rate that was significantly lower than the cash deposit rates paid at time of entry, and 2) a calculated rate for 2002 of *de minimis* which would result in no cash deposits being collected. The record of this review now shows that the CFP was enacted at the same time that Reintegro payments were lowered effectively to zero. Moreover, the record also shows that pursuant to Resolution 470/2001, in instances where the CFP exceeded the Reintegro, the CFP would be paid in lieu of the Reintegro. At the time we granted the GOA's request to expand the POR, we were not aware that the GOA was providing assistance to honey exporters in lieu of the Reintegro. Therefore, we applied adverse facts available, and we find that the adverse inferences applied by the Department will be enough to ensure that the GOA will cooperate to the best of its ability in future proceedings because cash deposits will still be required.

We also disagree with GOA's position that the cash deposit rate applicable to honey exports as a result of this review should not contain any component related to the CFP which the GOA claims was terminated in January 2002. The record shows that the CFP was suspended rather than terminated on January 29, 2002. As such, pursuant to section 351.526(d) or the regulations, it would be inappropriate to set the cash deposit rate applicable to the CFP at zero without a determination that changes to the CFP constitute program-wide changes in accordance with section 351.526(d) of the regulations. As petitioners note, the GOA has prevented the Department from fully analyzing and verifying whether assistance to exporters of subject merchandise continue under this program or a substitute program. As such, given the incomplete information about the CFP on the record due to the GOA's failure to cooperate, we will continue to include a CFP component in the cash deposit rate which results from this review.

Therefore, consistent with our methodology in the Preliminary Results, we will continue to analyze data for the period January 1, 2001 through December 31, 2001 to determine the net countervailable subsidy rate for exports of subject merchandise made during the periods in 2001 when liquidation of entries was suspended. In addition, we will continue to analyze data for the period January 1, 2002 through December 31, 2002 to determine the net countervailable subsidy rate for exports during that period and to establish the cash deposit rate for subsequent exports of subject merchandise. As such, the total net countervailable subsidy rate is 5.77 percent *ad valorem* for 2001 and 0.57 percent *ad valorem* for 2002. The cash deposit rate will be 0.57 percent *ad valorem*.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results in the Federal Register.

Agree_____ Disagree_____

_____
James J. Jochum
Assistant Secretary
for Import Administration

_____
Date